

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 5/8/13

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HARBINGER F&G, LLC,

Plaintiff,

v.

OM GROUP (UK) Limited,

Defendant.
-----X

No. 12-cv-5315 (RA) (AJP)

~~PROPOSED~~ ORDER
APPOINTING A SPECIAL
DISCOVERY MASTER

Having considered the arguments of the parties and reviewed a sample of documents withheld by Plaintiff as privileged at the April 4 and 17, 2013 conferences, and good cause appearing therefore,

IT IS HEREBY ORDERED as follows:

1. Pursuant to Rule 53(a)(1)(C) of the Federal Rules of Civil Procedure, HON. KATHLEEN A. ROBERTS (RET.) is appointed as Special Discovery Master ("Special Master") in this action, effective immediately. The Special Master has filed an affidavit stating that there are no grounds for disqualification under 28 U.S.C. § 455, as required by Fed. R. Civ. P. 53(b)(3)(A).

2. Appointment of a Special Master is necessary to address matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of this district, namely Defendant's challenges to approximately eight-hundred eighty-five documents that Plaintiff has withheld as privileged.

3. The Special Master shall be empowered and charged with the duty to assess Defendant's challenges to certain documents Plaintiff has withheld as privileged. The Special Master shall prepare a report that recommends to the Court the following: (i) documents, identified by bates number, that Plaintiff has improperly withheld and must produce, and (ii) documents, identified by log number, that are partially privileged and Plaintiff must produce in redacted form. The Special Master is directed to complete said report and recommendation and file said documents with the Clerk of the Southern District of New York ~~no later than May __,~~ ^{ASAP.} ~~2013.~~

4. The Special Master shall be authorized to retain appropriate assistants and associates, as may be reasonably necessary to accomplish the duties set forth in paragraph 4.

5. The Special Master shall make every effort to minimize his or her expenses while at the same time carrying out the mandates of this Order. The Special Master shall have the sole discretion to determine the appropriate procedures for resolution of all assigned duties and shall have the authority to take all appropriate measures to perform the assigned duties.

6. The Special Master shall maintain and preserve the following records:
- a. Normal billing records of time spent on the matter, with reasonably detailed descriptions of activities and matters worked on;
 - b. Documents received from counsel;
 - c. The report and recommendation, as set forth in paragraph 4; and
 - d. Any other documents created by the Special Master that are filed in court.

7. Defendant shall bear the costs and fees associated with the Special Master, as set forth in the JAMS Fee Schedule annexed hereto, unless the Special Master determines in her discretion that a portion or all of the cost should be reallocated to Plaintiff.

8. There shall be no ex parte communications with the Special Master.

SO ORDERED

A handwritten signature in black ink, appearing to read "Andrew J. Peck", written over a horizontal line.

Honorable Andrew J. Peck
United States District Judge

Dated: May 8, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| HARBINGER F&G, L.L.C., | : |
| | : |
| Plaintiff, | : |
| | : |
| v. | : |
| | : |
| OM GROUP (UK) Limited, | : |
| | : |
| Defendant. | : |
| | : |
| -----X | |

No. 12-cv-5315 (RA) (AJP)

**AFFIDAVIT OF
KATHLEEN A. ROBERTS**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

KATHLEEN A. ROBERTS, being duly sworn, deposes and says:

1. I am an attorney admitted to the Bar of the State of New York. I submit this affidavit pursuant to Rule 53(b)(3)(A) of the Federal Rules of Civil Procedure.
2. I served as a United States Magistrate Judge for the Southern District of New York for 10 years. I retired from my position in 1995.
3. I have been provided with the identities of all parties and counsel in this action. I have also reviewed the provisions of 28 U.S.C. § 455 and Fed. R. Civ. P. 53(a)(2).
4. I have no present, and have had no prior, contact with any of the parties in this action.
5. I presently have no contact with any of the counsel in this action. I have had prior contact with Plaintiff's counsel, Debevoise & Plimpton LLP ("Debevoise"). Since joining JAMS in 1995, I have mediated five (5) business/commercial cases in which one of the parties was represented by counsel from Debevoise: 2004, 2006 (2), 2007, and 2010. I have

arbitrated two (2) business/commercial cases in which one of the parties was represented by counsel from Debevoise: 2000 and 2008.

6. Daniel M. Abuhoff, Esq., one of the Debevoise attorneys for Plaintiff in this action, was involved as counsel in a prior matter in which I served as mediator. Defendant has informed me that it has no objection to my appointment as a result of said prior contact with Mr. Abuhoff.

7. I have also had prior contact with Defendant's counsel, Willkie Farr & Gallagher LLP ("Willkie"). Since joining JAMS in 1995, I have mediated five (5) business/commercial cases in which one of the parties was represented by counsel from Willkie: 1997 (2), 2004 (2), and 2006. I also arbitrated one (1) real estate case in which Willkie was a party in 2000. None of the Willkie attorneys involved in this action were involved in any of the prior matters in which I served as mediator or arbitrator.

8. I have no financial interest in the outcome of this proceeding, and have no personal knowledge of any facts at issue in this action. I do not have any personal bias or prejudice concerning any party to this action.

9. I am unaware of any basis on which my impartiality could reasonably be questioned, or any other ground that would disqualify me from serving as Special Discovery Master in this action.

Dated: May 2, 2013


Kathleen A. Roberts

Subscribed and sworn to before me
on this 2nd day of May, 2013


Notary Public

VICKIE L. JOHNSTON
Notary Public - State of New York
No. 01JO6113098
Qualified in Queens County
My Commission Expires July 19, 2016